

access. Similarly, discretion with regard to channel and tier placement interferes with the right of programmers to have a genuine outlet and should also be rejected.

If the Commission wants a clear exposition of why it should adopt rules that will increase the use of leased access, it need only imagine what is likely to be the case if it abandoned its proposed rules and instead accepted the proposals of many cable operators and non-leased access programmers. The highest implicit fee calculation would continue to allow operators to set exorbitant rates, and leased access would continue to be the preserve of the one or two part-time programmers per system who could afford it, the much vilified direct sales programmers. Even if the rate calculations were to change, many of the current unaffiliated leased access programmers would no longer be in existence at the end of the three-year period usually suggested -- they will have disappeared because of their inability to reach subscribers. Cable operators would be free to place leased access programming on any tier, in any channel location, and could also change these locations frequently enough that subscribers would soon tire of trying to access them. This scenario, entirely possible under many of the comments submitted to the Commission, runs entirely contrary to the right granted by Congress.

IV. USE OF LEASED ACCESS CHANNELS

GSN would like to make one final observation with respect to the comments submitted by Adelphia. Adelphia asks that the Commission "make it clear that cable operators are not required to lease capacity on their systems for other than video programming uses."⁴⁹ However, while leased access requires channels to be designated for video programming, it is by no means clear that the entire leased channel be used for video programming, and a leased access programmer might be able to provide other services over its leased capacity in addition to video programming. Moreover, although the definition of "video programming" is statutorily prescribed,⁵⁰ flexibility in the regulatory interpretation of this definition may be warranted given that the underlying rationale of leased access is to promote a diversity of different sources of services over cable systems. GSN believes the extent of a leased access programmer's right to use its leased capacity for purposes other than video programming is far too complex to decide in a summary fashion, and urges the Commission to conduct further proceedings to study the question.

⁴⁹ Adelphia Comments at 31.

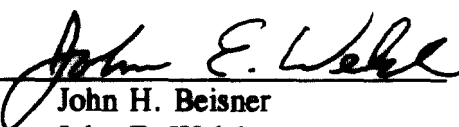
⁵⁰ See Communications Act, § 602(19), 47 U.S.C. § 531(19).

CONCLUSION

GSN, together with many unaffiliated national and local programmers, continues to believe that the Commission's proposed cost/market calculation will provide the best opportunity for leased access to fulfill its promise of bringing a diversity of sources to cable programming since the leased access rules were formulated. The Commission, in trying to usher in a workable leased access system, has been presented with a vision of cable programming that extrapolates from the worst possible scenarios under the current regime. Instead, the Commission should continue to focus on realistic scenarios under the regime it has proposed, and expeditiously adopt its proposed rules with such refinements as GSN advanced in its comments.

Respectfully submitted,

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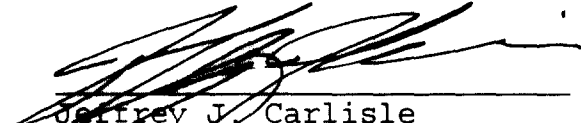
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